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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/499,693	02/08/2000	Insu Lee	00120/P-4858	1622

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EXAMINER
WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
1617	20

DATE MAILED: 10/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/499,693	LEE ET AL.	
	Examin r	Art Unit	
	Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 August 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

4)☒ Claim(s) *26-45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26-45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 19 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claims 26-45 are pending. The Amendment filed 8/9/02, cancelled claims 1, 6, 8, 19-25, amended claims 26, 30, 34, 38, 42-45, and amended the paragraph starting on line 3 of page 7 of the specification.

Response to Arguments

Applicant's arguments are sufficient to overcome the 35 USC 112, first paragraph rejection, over the term "rapeseed" in the previous Office Action.

Applicant's additional arguments with respect to claims 26-45 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 34, 37, 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Leach (5,612,074).

Leach teaches a nutrient fortified food bar. Recited in the claims is an uncooked food bar consisting essentially of dry ingredients combined with a mixture of liquid ingredients, wherein the liquid ingredients includes at least one vegetable oil containing polyunsaturated linoleic acid and at least on vegetable oil containing alpha-linolenic acid, wherein the linoleic to linolenic ratio is 3:1. Flax seed is recited as an oil for use in the composition that contains both linolenic and linoleic acid. Thus, the instant invention and Leach both teach a composition comprising

flaxseed oil, wherein the ratio of linoleic to linolenic fatty acid is 3:1. See Col. 9, line 20-Col. 16, line 38.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 27-33, 35-36, 38-41 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach, as applied to claims 26, 34, 37, 42 above, in view of Erasmus et al. (5,656,312) and Hunter et al. (4,863,753) in further view of Igarashi (6,159,507).

The instant invention is directed toward a composition comprising flaxseed oil and a ratio of linoleic to linolenic oil of 0.05-7.5. Rapeseed oil and perilla oil are additional ingredients.

Leach is applied as discussed above. The reference lacks preferred ratios, rapeseed and perilla oil, and capsule forms of the composition.

Erasmus et al. teach a dietary food supplement. Perilla and flax seed oils are disclosed as combinable oils. See Col. 11, lines 24-Col. 14, line 43.

Hunter et al. teach composition comprising reduced calorie peanut butter. Perilla oil and rapeseed oil are both disclosed as oils that can be used as fatty acids in the composition. Rapeseed oil is disclosed a stabilizer for the oil phase of the composition. See Col. 6, lines 3-34.

Igarashi teaches food compositions containing an omega-6/omega-3 unsaturated fatty acid balance modifier. Igarashi teaches that food compositions comprising a ratio of omega-3 fatty acids to omega-66 fatty acids is 1:1 to 1:5 are known. Furthermore the reference teaches

that the normal balance to be inherently maintained in the body of omega-6 to omega-3 fatty acids is 1:5 and preferably 2 to 4. Capsule forms of the composition are disclosed. See Col. 5, line 64-Col. 6, line 40; Col. 7, lines 1-8.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the perilla seed oil of Eramus et al. to the composition of Leach because a) Leach and Erasmus are both directed to food supplements; b) Erasmus teaches that perilla seed oil and flax seed oil can be in composition together in a food supplement; and c) Leach teaches that the liquid phase of his composition can comprise one or more seeds containing linolenic acid, and Hunter teaches perilla oil as a source of linolenic acid; thus, one of skill in the art would have been motivated to add the perilla oil of Eramus to the composition of Leach.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the rapeseed oil of Hunter et al. to the composition of the combined references because Hunter teaches the combination of rapeseed oil and perilla oil in composition together in a food supplement, and teaches rapeseed oil as providing stability to the oil phase of compositions; thus, one of skill in the art would have been motivated to add the rapeseed oil of Hunter to the composition of the combined references because of the expectation of increasing the stability of the composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Igarashi into the invention of the combined references and obtain a ratio of linoleic to linolenic acid of 0.05-2 because a) the combined references and Igarashi are both directed to food products, and Igarashi teaches that ratios of 1:1 to 1:5 are known to be used in food compositions and he furthermore teaches that the body prefers a ratio

of 1-5. Thus, one of skill in the art would be motivated to incorporate the ratios of omega-6 to omega-3 fatty acids of Igarashi into the composition of the combined references because of the expectation of producing a food bar that maintains the proper physiological balance of omega-6 to omega-3 fatty acids in the body.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for

the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
September 24, 2002

SREENI PADMANABHAN
PRIMARY EXAMINER

10/14/02